

Mark Kirstein

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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF PENNSYLVANIA

THE OFFICIAL COMMITTEE OF  
UNSECURED CREDITORS OF  
ALLEGHENY HEALTH, EDUCATION  
& RESEARCH FOUNDATION,  
Plaintiff,

vs.

PRICEWATERHOUSECOOPERS,  
LLP,

Defendant.

Civil Action  
No. 00-684

Continued Videotaped Deposition of  
MARK D. KIRSTEIN, called for examination under  
the Applicable Rules of Federal Civil  
Procedure, taken before me, Michele E. Eddy, a  
Registered Professional Reporter and Notary  
Public in and for the State of Ohio, pursuant  
to notice and stipulations of counsel, at the  
offices of Jones Day, 222 East 41st Street,  
Suite 400, New York, New York, on Thursday, the  
13th day of May, 2004, at 8:30 a.m.

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<p style="text-align: right;">Page 584</p> <p>1 substantive review role for all areas at the 2 managerial level or manager level for fiscal 3 year 1997?</p> <p>4 MR. RYAN: Objection to form.</p> <p>5 A. From a manager's perspective, she 08:55:32 6 would be the person that would do that, yes.</p> <p>7 Q. I think you've told us you don't 8 remember AHERF moving to a new bad debt 9 reserving methodology for fiscal year 1997, so 10 I think I can anticipate the answer to this 08:55:51 11 question, but forgive me. Did you ever learn 12 that anyone at AHERF was involved in the 13 process of developing a new methodology for 14 fiscal year 1997, anyone internal or employed 15 by AHERF, internal to or employed by AHERF? 08:56:06</p> <p>16 A. I don't recall hearing that.</p> <p>17 Q. Do you recall learning that either 18 Mr. Cancelmi or those at the patient financial 19 services group were involved in such an 20 endeavor? 08:56:19</p> <p>21 A. No, sir.</p> <p>22 Q. Do you have a view as you sit here 23 today about who would have been better suited 24 to prepare a new or a methodology for fiscal 25 year 1997 between Mr. Cancelmi and those in 08:56:32</p>	<p style="text-align: right;">Page 586</p> <p>1 consolidated audit?</p> <p>2 A. You mean in '97 AHERF would have 3 one audit for all of AHERF? Yes.</p> <p>4 Q. In connection with that, do you 5 recall issues arising with respect to the 08:58:21 6 debt-holders for the various obligated groups?</p> <p>7 A. What sort of issues?</p> <p>8 Q. Issues about whether a consolidated 9 audit at AHERF complied with the terms of the 10 debt instruments at the various obligated 08:58:40 11 groups.</p> <p>12 A. What I recall is management 13 asked -- management engaged in dialogue with us 14 in the planning process in the -- for fiscal 15 '97 about doing a consolidated audit. 08:58:57</p> <p>16 Coming off of '96 where we had just 17 done the DVOG audit, and I think there was an 18 AGH obligated group audit, what I recall is 19 that Coopers &amp; Lybrand, we had said to 20 management, we can do whatever audit you want 08:59:10 21 us to do, you can engage us for the scope, but 22 you need -- you, AHERF, need to consult with 23 your debt-holders and your legal counsel 24 eventually to ensure that whatever audit report 25 we issue will be sufficient for your debt 08:59:26</p>
<p style="text-align: right;">Page 585</p> <p>1 his -- on his staff or those at the patient 2 financial services group?</p> <p>3 MR. RYAN: Objection. Vague. Lack 4 of foundation.</p> <p>5 A. What do you mean by better suited? 08:56:42</p> <p>6 Q. I would just ask you if you had a 7 view.</p> <p>8 A. I put everyone -- you talked about 9 AHERF people. It's AHERF's financial 10 statements and AHERF's system of internal 08:56:51 11 controls. I don't know who's better suited. I 12 don't know what you mean by that. But if they 13 were developing a new process, I would assume 14 they would do whatever reviews and dialogue and 15 discussions and consultation they felt 08:57:03 16 necessary amongst their own people.</p> <p>17 Q. Do you recall any discussions with 18 anyone at AHERF about, or at Coopers &amp; Lybrand 19 about a proposed or implemented new bad debt 20 reserve methodology for fiscal year '97? 08:57:15</p> <p>21 A. No, I have no recollection.</p> <p>22 Q. You recall, however, that for 23 fiscal year -- let me withdraw that.</p> <p>24 You recall, Mr. Kirstein, that for 25 fiscal year 1997, AHERF was moving to a 08:58:02</p>	<p style="text-align: right;">Page 587</p> <p>1 purposes.</p> <p>2 Q. Do you recall with whom at AHERF 3 you may have had any such discussions?</p> <p>4 A. It's the same general group I've 5 given you the last two days. I mean, finance 08:59:40 6 folks. I don't remember specific discussion. 7 But planning for '97 was pretty much with Dan 8 Cancelmi, Steve Spargo, Al Adamczak.</p> <p>9 Q. Do you recall that Mr. Spargo left 10 the organization sometime in 1997? 09:00:05</p> <p>11 A. Yes, sometime early during the 12 planning stage. I don't remember the exact 13 date.</p> <p>14 Q. Do you recall who assumed his 15 responsibilities? 09:00:14</p> <p>16 A. I believe Al Adamczak, but I don't 17 know if that was a one-for-one assumption of 18 responsibilities. I don't know everything that 19 Steve did and everything that Mr. Al did.</p> <p>20 Q. The reason I raise it, when Mr. 09:00:28 21 Spargo left, you didn't start communicating 22 with somebody new; the group with whom you 23 primarily communicated just got one person 24 smaller; is that fair to say?</p> <p>25 A. Yes. 09:00:39</p>

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<p style="text-align: right;">Page 588</p> <p>1 Q. There wasn't a replacement for Mr. 2 Spargo, whose name we haven't mentioned? 3 A. No, not that I'm aware of. 4 Q. Mr. Kirstein, I'm going to hand you 5 a rather large exhibit and ask you not to be 09:00:51 6 afraid. It is an exhibit you've seen before in 7 the SEC proceeding and I think we're going to 8 leave it just like it was there because the 9 copy is superior to our copies of some of the 10 documents, and we will flip back and forth in 09:01:05 11 it from time to time, but we are going to have 12 to look at the whole thing. 13 A. Okay. 14 Q. It is -- I'm going to need to mark 15 that. I apologize. 09:01:12 16 It is Exhibit 377 in the SEC 17 proceeding, I believe, and we would like to 18 mark it in this case as exhibit next. 19 MR. TORBORG: Spelled N E X T. 20 Q. And that number is 4403. 09:01:33 21 - - - - - 22 (Thereupon, Deposition Exhibit 4403 23 was marked for purposes of 24 identification.) 25 - - - - - 09:01:39</p>	<p style="text-align: right;">Page 590</p> <p>1 Q. Yes, it is an AHERF audit update, 2 August 15, 1997, is that right? 3 A. Yes. 4 Q. Does it contain your handwriting? 5 A. Yes, it does. 09:02:40 6 Q. I'm going to refer you in 7 particular -- well, take a moment to read the 8 document and your notes. 9 A. Great, thanks. 10 Okay. 09:04:01 11 Q. The notes are all yours in your 12 hand? 13 A. I believe so, yes. 14 Q. I'm going to refer you to the point 15 with the black diamond next to it which appears 09:04:09 16 about a quarter of the way down the page headed 17 debt. 18 A. Okay. 19 Q. And beneath that, the first 20 subpoint reads, "Written representation from 09:04:19 21 bondholders regarding financial statements," 22 and then beneath that, "Need for individual 23 compliance letters" with three question marks. 24 Do you see that? 25 A. Yes. 09:04:32</p>
<p style="text-align: right;">Page 589</p> <p>1 Q. I will direct your attention 2 obviously to a relative few pages in this 3 document from time to time this afternoon -- 4 this morning. 5 A. Okay. 09:01:53 6 Q. The first one today -- as you may 7 recall, it is a combination of a number of 8 documents, and I know not whether they are 9 supposed to be related, but it was used in that 10 prior deposition and really did have superior 09:02:04 11 quality copies on a number of pages. 12 I'm going to ask you to look at 13 page 28 now, which I think is a distinct 14 document within it. It's a single-page 15 document. 09:02:19 16 A. Where is the page number, bottom in 17 the lower right? 18 Q. They are in the lower right-hand 19 corner, yes. 20 They start with the prefix PwCK2 in 09:02:23 21 all instances, and, for our ease, I'm just 22 going to refer to the last two digits on the 23 far right side. 24 A. Hang on. Document dated August 25 15th at the top? 09:02:33</p>	<p style="text-align: right;">Page 591</p> <p>1 Q. What is the handwritten note that 2 appears to have a line drawn to one or both of 3 those subpoints? How does that read? 4 A. It's only drawn to the -- looks -- 5 appears to be only drawn to the second bullet, 09:04:43 6 title, Need for Individual Compliance Letters. 7 It says C&amp;L to draft, and then, in parentheses, 8 Christa, Brian to research. 9 Q. Having had a chance to read the 10 document, do you think, first of all, that you 09:04:55 11 prepared this audit update? 12 A. The actual typed part? 13 Q. Yes. 14 A. I don't recall. 15 Q. Do you recall reviewing it before 09:05:02 16 today? 17 A. Sometime during preparation. 18 Q. Do you recall, as you sit here 19 today, what the handwritten note means to you, 20 or do you know what the handwritten note means? 09:05:13 21 MR. RYAN: You mean that note that 22 we've read? 23 MR. JONES: Yes, the one he just 24 read into the record. 25 A. I don't recall writing it, but it 09:05:23</p>

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<p style="text-align: right;">Page 592</p> <p>1 looks like it's just a note that says Christa  2 Porter and Brian Christian were to research  3 something related to debt compliance letters.  4 Q. Do you recall that there was an  5 effort on Cooper &amp; Lybrand's part to assist its 09:05:34  6 client in evaluating whether the consolidated  7 financial statements, audited financial  8 statements that were proposed for the fiscal  9 year 1997 would comply with the various debt  10 agreements of the various obligated groups? 09:05:51  11 THE WITNESS: Could you read that  12 again, please?  13 (Record read.)  14 A. I don't recall that.  15 All I recall is what I said 09:06:19  16 earlier, that C&amp;L had told AHERF management  17 that they need to consult with their legal  18 counsel and other appropriate parties for them  19 to ensure that what we would audit and provide  20 to them would be sufficient for their debt 09:06:31  21 purposes.  22 Q. Did you ever learn that Mr. -- that  23 Brian or Christa, Mr. Christian or Miss Porter  24 ever did any research?  25 MR. RYAN: Objection. I think 09:06:41</p>	<p style="text-align: right;">Page 594</p> <p>1 A. Not that I recall.  2 Q. Do you recall --  3 A. And I assume in your last question  4 you is Mark Kirstein?  5 Q. Yes, I meant you personally. 09:07:41  6 A. Not that I recall.  7 Q. Do you recall becoming aware of an  8 effort on the part of AHERF to secure written  9 representation from the various bondholders to  10 the effect that the consolidated financial 09:08:05  11 statements that were proposed would comply with  12 the terms of their debt agreements?  13 MR. RYAN: Would you read that  14 again, please?  15 (Record read.) 09:08:07  16 THE WITNESS: One more time,  17 please? I'm sorry.  18 (Record read.)  19 A. I don't recall becoming aware of  20 that, but I also believe that Amy Frazier and 09:08:56  21 Bill Buettner addressed matters with management  22 related to debt covenants and required  23 communications that might be necessary with  24 AHERF and their legal counsel. I think that  25 was Foley &amp; Lardner. 09:09:12</p>
<p style="text-align: right;">Page 593</p> <p>1 that's a misleading way of asking the question  2 because the topic that they are supposed to  3 research is a completely different topic the  4 witness has indicated from the topic of the  5 previous sentence. So I'll object. 09:06:54  6 Q. Do you recall whether they did the  7 research?  8 MR. RYAN: Objection. What  9 research?  10 MR. JONES: Referred to in his 09:07:02  11 note.  12 A. I said I don't recall what research  13 that would be, so I just don't know.  14 Q. You recall seeing no results of  15 research that had anything to do with debt from 09:07:09  16 those two individuals, is that fair to say?  17 A. I don't recall.  18 Q. Did you ever do any research  19 yourself on the topic of debt at the various  20 obligated groups in connection with the 09:07:23  21 consolidated financial statements that were  22 proposed?  23 MR. RYAN: Objection to form.  24 A. In '97?  25 Q. Yes, for fiscal year '97. 09:07:31</p>	<p style="text-align: right;">Page 595</p> <p>1 Q. Regarding debt compliance matters  2 in connection with the audited financial  3 statements?  4 A. Yes, it's my understanding, not  5 recollection, understanding some of that may be 09:09:20  6 from prep. But I do recall Bill and Amy dealt  7 with the debt covenant pieces as the audit  8 wrapped up, I recall that.  9 Different times during preparation  10 I've seen, you know, Amy and Bill I believe 09:09:32  11 worked with AHERF management and their counsel  12 Foley &amp; Lardner to determine what was required  13 from a debt compliance perspective.  14 Q. And in preparation you mean either  15 in connection for this deposition or 09:09:48  16 depositions in the SEC proceeding?  17 A. Correct.  18 Q. Let me ask you to look at the last  19 diamond under debt on page 28 of Exhibit 4403.  20 A. Okay. 09:10:05  21 Q. It says, "Potential debt covenant  22 violations," and then it has three question  23 marks next to it. Is that correct?  24 A. Yes.  25 Q. Do you recall becoming involved in 09:10:13</p>

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1 A. Yes.  
 2 Q. You have that before you again?  
 3 A. Yes.  
 4 Q. Do you recall reviewing the  
 5 provision I asked you to review, 440.6, on 10:08:35  
 6 page -- the second page of the exhibit before  
 7 today?  
 8 A. No.  
 9 Q. I'm going to ask you now to look at  
 10 page 26 of Exhibit 58, which itself is the 10:08:50  
 11 consolidated financial statements at AHERF for  
 12 the year-ending June 30, '97.  
 13 A. Okay.  
 14 Q. What did you understand in  
 15 connection with your audit work at AHERF the 10:09:05  
 16 purpose of this report at page 26 to be?  
 17 A. It's a report that -- the language  
 18 pretty much does a nice job of explaining what  
 19 it is. It's a report that is on supplemental  
 20 information. So it's not a required part of 10:09:34  
 21 the AHERF consolidated financial statements  
 22 that is informing whoever would be reading this  
 23 that it is supplemental information and it's  
 24 telling them that it's not -- that the audit  
 25 was not designed to audit necessarily the 10:09:46

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1 detailed information in there. But, as it  
 2 says, this is presented for additional  
 3 analysis, this does not require -- a required  
 4 part of the consolidated financial statements.  
 5 Then it goes on and does give an 10:10:00  
 6 opinion or at least -- yeah, an opinion that  
 7 says, "The supplementary consolidated financial  
 8 information has been subjected to the auditing  
 9 procedures applied in audit of the consolidated  
 10 financials and in our opinion is fairly stated 10:10:12  
 11 in all material respects in relation to the  
 12 consolidated financial statements taken as a  
 13 whole.  
 14 Q. Let me ask you to put that aside  
 15 for a moment. I'm going to ask you now about 10:10:40  
 16 another set of issues related to your work on  
 17 the fiscal year 1997 audit at AHERF. In  
 18 particular, the transfer of certain reserves to  
 19 the Delaware Valley Obligated Group hospitals.  
 20 When I ask these next questions, 10:11:02  
 21 I'm going to refer to the Graduate hospitals  
 22 and the Delaware Valley Obligated Group  
 23 hospitals.  
 24 You understand those to be two sets  
 25 of hospitals within the AHERF family in fiscal 10:11:11

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1 year 1997?  
 2 A. Yes.  
 3 Q. The Graduate hospitals included  
 4 hospitals with names like the Graduate  
 5 Hospital, Mt. Sinai, Rancocas, City Avenue and 10:11:24  
 6 Parkview, is that consistent with your  
 7 recollection?  
 8 A. Yes.  
 9 Q. The Delaware Valley Obligated Group  
 10 hospitals to which we referred both today and 10:11:33  
 11 yesterday included hospitals named Hahnemann,  
 12 MCPH, EPPI?  
 13 A. Right.  
 14 Q. St. Chris, Elkins and Bucks?  
 15 A. I think that's right. 10:11:45  
 16 Q. For purposes of my questions that  
 17 follow, I'm going to use those definitions. Is  
 18 that fair to you?  
 19 A. Sure.  
 20 Q. When do you -- when do you first 10:11:56  
 21 recall, Mr. Kirstein, learning that AHERF had  
 22 set up 50 million dollars of reserves in  
 23 connection with purchase price accounting for  
 24 the acquisition of the Graduate hospitals and  
 25 then transferred those reserves to the DVOG 10:12:17

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1 hospitals?  
 2 MR. RYAN: Can I get that read  
 3 back, please?  
 4 Q. Bad debt reserve.  
 5 MR. RYAN: Sorry, Jim, I didn't 10:12:25  
 6 mean -- I didn't realize you weren't done.  
 7 (Record read.)  
 8 Q. Reserve accounts.  
 9 A. Sometime early in the year-end  
 10 phase of the audit, so say August I recall 10:12:54  
 11 learning -- I believe I learned that from Amy  
 12 Frazier.  
 13 Q. When do you first recall learning  
 14 that AHERF was planning to do what I just said,  
 15 or considering doing what I just said? 10:13:15  
 16 MR. RYAN: Objection to form.  
 17 Q. Let's start with planning.  
 18 A. I don't recall ever learning that  
 19 they were planning to do that. The first time  
 20 I recall learning that they had transferred 10:13:27  
 21 reserves set up through purchase accounting was  
 22 in early August.  
 23 Q. So the first time you learned of  
 24 it -- of the transfer of reserves or any  
 25 planning or consideration of it at all was in 10:13:39

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1 this early August time frame, 1997?  
 2 A. That's my recollection.  
 3 Q. So you never learned of it in  
 4 advance of believing that it had already  
 5 occurred, is that fair to say? 10:13:56  
 6 THE WITNESS: Could you read that  
 7 one again?  
 8 (Record read.)  
 9 A. I don't understand that question.  
 10 Q. I'm sorry. 10:14:09  
 11 The first time you heard or had any  
 12 awareness of transfers of purchase accounting  
 13 reserves established in connection with the  
 14 Graduate hospitals' acquisition by AHERF to the  
 15 Delaware Valley Obligated Group hospitals' bad 10:14:30  
 16 debt reserve was at a time when you believe the  
 17 transfers had already been effected or had  
 18 occurred?  
 19 A. I believe that's what happened. I  
 20 mean, in -- as I recall, I mean, I learned 10:14:48  
 21 early in the year-end phase of the audit that  
 22 C&L had received the purchase accounting  
 23 support, the support for the opening balance  
 24 sheet of Graduate hospitals. At that point  
 25 that's when Amy Frazier learned that there was 10:15:02

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1 a transfer.  
 2 Q. And is it -- should I take from  
 3 that answer that you learned of this transfer  
 4 of reserves -- was the amount 50 million that  
 5 you first heard of? 10:15:18  
 6 A. I don't specifically recall today  
 7 the amount, but that's consistent.  
 8 Q. That's consistent with what?  
 9 A. It's consistent generally with any  
 10 numbers that I've heard throughout, you know -- 10:15:25  
 11 during the audit. I mean, I can't sit here  
 12 today and say that day Amy told me it's 50  
 13 million dollars.  
 14 Q. You later learned that this  
 15 purchase price accounting reserve amount that 10:15:35  
 16 was transferred to bad debt reserve was in the  
 17 amount of 50 million dollars; is that fair to  
 18 say?  
 19 A. Yes.  
 20 Q. Sometime after -- at or after early 10:15:44  
 21 August of 1997?  
 22 A. Correct.  
 23 Q. My question was, is it fair to say  
 24 from your answer, an answer or two ago, that  
 25 you learned of this development from Miss 10:15:55

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1 Frazier?  
 2 A. Yes.  
 3 Q. How is it that you learned of it,  
 4 through a letter, through a face-to-face  
 5 conversation, otherwise? 10:16:13  
 6 A. No. I believe, as I recall, I  
 7 believe Amy had received opening balance sheet  
 8 information related to Graduate or some sort of  
 9 information related to the Graduate  
 10 acquisition. I was over at the Clark Building. 10:16:24  
 11 We talked earlier about my role being a  
 12 managerial role. At some point, I don't  
 13 remember the date or time, Amy informed --  
 14 discussed with me at that point that she had  
 15 learned that they had transferred reserves to 10:16:34  
 16 Delaware Valley and that she was undertaking  
 17 audit procedures.  
 18 Q. Was anybody else present?  
 19 A. I don't recall.  
 20 Q. What do you recall about the 10:16:43  
 21 conversation?  
 22 A. I don't recall specifics about the  
 23 conversation.  
 24 Q. Do you recall being concerned about  
 25 the fact that she had revealed to you? 10:16:51

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1 MR. RYAN: Objection to form.  
 2 A. No.  
 3 Q. Do you recall her expressing  
 4 concern over the fact that she had revealed to  
 5 you? 10:17:07  
 6 MR. RYAN: Objection.  
 7 Q. The fact of the transfers.  
 8 MR. RYAN: Objection to form.  
 9 A. No.  
 10 Q. Did either of you discuss whether 10:17:14  
 11 or not at this time the transfers would have  
 12 been in compliance with Generally Accepted  
 13 Accounting Principles?  
 14 A. No. All I generally recall is  
 15 learning that Amy learned of a transfer and 10:17:29  
 16 that she was going to undertake audit  
 17 procedures. You don't typically make judgments  
 18 and assessments of whether it's GAAP or  
 19 allowable or unallowable until you complete  
 20 audit procedures. 10:17:41  
 21 Q. Did you at that time form an  
 22 opinion that you should take this to  
 23 Mr. Buettner promptly, this revelation?  
 24 MR. RYAN: Objection to form.  
 25 A. I don't know what you mean by 10:17:52

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1 Q. I would like to turn your attention  
2 to page 45 of the notes. At the top of the  
3 page there's a header that is underlined that  
4 reads, Dan C period, 4-18, and I think  
5 continues with the names Buettner slash 10:32:47  
6 Frazier. Am I right?  
7 A. Yes.  
8 Q. Does having a chance to see that  
9 and looking at the notes refresh your  
10 recollection that these are notes of a 10:32:57  
11 conversation among those three people and you?  
12 MR. RYAN: Objection.  
13 A. I believe they're notes of a  
14 conversation amongst Bill Buettner, Amy  
15 Frazier, Dan Cancelmi. I don't recall the 10:33:13  
16 specific conversation that these notes  
17 reference, but --  
18 Q. You recall being involved yourself  
19 as well?  
20 A. I don't recall this specific 10:33:20  
21 meeting on April 18th, but the nature of my  
22 note taking is to write the attendees at the  
23 top.  
24 Q. Do you write your own name down is  
25 what I'm getting at? 10:33:30

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1 A. No.  
2 Q. Or do you typically not do so?  
3 A. I typically do not do that.  
4 Q. So if you followed your protocol,  
5 this was a meeting or at least a phone call in 10:33:38  
6 which you were a participant at some level?  
7 A. Correct.  
8 Q. Do you recall whether it was a  
9 meeting or a phone call?  
10 A. I don't recall. 10:33:45  
11 Q. You typically date your notes on  
12 the day the communication took place?  
13 A. Yes.  
14 Q. Do you have any reason to doubt  
15 that this communication took place on April 18, 10:34:00  
16 1997 today?  
17 MR. RYAN: Objection.  
18 A. Doubt that it took place?  
19 Q. Yes.  
20 A. I suspect it did take place. 10:34:07  
21 Q. So you don't have a reason to doubt  
22 it, I'm right?  
23 A. Correct.  
24 Q. What does the line across the  
25 middle of the page mean to you, if anything, in 10:34:24

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1 connection with your note taking practices?  
2 A. It doesn't mean anything.  
3 Q. Can you read the first two lines  
4 beneath that line across the middle of the page  
5 for us? 10:34:41  
6 A. 50 million dollar reserves at  
7 Graduate, will have 80 million dollars C slash  
8 O, charge-offs, in DV by 6-30-97, and then in  
9 parens, gross number on A/R outpatient.  
10 Q. The C/O means charge-offs? 10:35:03  
11 A. I believe so, yes.  
12 Q. Does the DV mean the Delaware  
13 Valley Obligated Group?  
14 A. I don't know what the DV means in  
15 this situation. 10:35:12  
16 Q. I just asked you before if DV in  
17 your answer meant Delaware Valley Obligated  
18 Group. So does having me refresh your  
19 recollection there lead you to believe that DV  
20 most likely means Delaware Valley Obligated 10:35:25  
21 Group in these notes?  
22 MR. RYAN: Objection. Misstates  
23 prior question and answer.  
24 A. No, don't read anywhere DV meaning  
25 any one thing at any one time. You would have 10:35:36

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1 to be at the place of a meeting to know the  
2 context of DV. The reason I say that is  
3 Delaware Valley is a common term used by the  
4 audit team as well as by AHERF management to  
5 discuss the eastern region, the Philadelphia 10:35:52  
6 and eventually later New Jersey hospitals. It  
7 also happens to be the Delaware Valley  
8 Obligated Group. But in most cases in dialogue  
9 with management throughout the year as you're  
10 planning for the audit, you're really talking 10:36:04  
11 about hospitals. You're not usually talking  
12 about financial statements.  
13 So I would say it's actually  
14 probably more Delaware Valley references  
15 entities than it does an obligated group, which 10:36:17  
16 tends to happen later on when financial  
17 statements are being prepared.  
18 Q. So as you sit here today, you know  
19 that C/O, C slash O means charge-offs to the  
20 best of your ability to read your note? 10:36:31  
21 A. Yes.  
22 Q. You don't know whether the DV means  
23 Delaware Valley Obligated Group, is that right?  
24 A. That's right.  
25 Q. What does the gross number on A 10:36:35

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1 slash R outpatient mean?  
 2 A. I don't recall.  
 3 Q. Do you recall knowing at this time  
 4 frame, that is, in the spring or April -- in  
 5 the spring of or April of 1997 that AHERF 10:36:52  
 6 accounting had written off a large amount of  
 7 accounts on the books of the DVOG entities,  
 8 accounts receivable, that is?  
 9 A. Yes.  
 10 Q. Do you recall the quantum, roughly? 10:37:06  
 11 A. I believe and I generally recall 80  
 12 million dollars being a number I heard at  
 13 different points in time during planning, that  
 14 AHERF had charged off some old accounts  
 15 receivable related to the system conversions we 10:37:19  
 16 talked about yesterday and the day before from  
 17 PATCOM to Envision. There might have been  
 18 another -- another conversion in there as well.  
 19 Q. I'm going to ask you to read the  
 20 next line of your notes. 10:37:31  
 21 A. Placing reserves on Graduate  
 22 entities to be used for DVAR at Y slash E,  
 23 year-end.  
 24 Q. What does that mean to you today?  
 25 Or do you recall what you meant to write when 10:37:47

Page 653

1 you wrote that note?  
 2 A. No, I --  
 3 MR. RYAN: Objection.  
 4 A. No, I don't recall this meeting and  
 5 I think, therefore, I don't know what the 10:37:54  
 6 context was, so I don't know what I was writing  
 7 there.  
 8 Q. Do you recall today whether DV  
 9 meant the Delaware Valley Obligated Group or  
 10 some other group of hospitals? 10:38:05  
 11 A. I can't even tell you it meant a  
 12 group of hospitals. It could have meant the  
 13 entity. It could have meant the region  
 14 Delaware Valley.  
 15 Q. What does the next line of your 10:38:17  
 16 notes say?  
 17 A. "Does not believe there is any  
 18 general reserves other than 50 million  
 19 dollars."  
 20 Q. Do you recall what that means 10:38:25  
 21 today?  
 22 A. No, sir.  
 23 Q. Can you read the next two lines?  
 24 A. "Becomes part of PP&E slash  
 25 intangible as part of purchase adjustment from 10:38:37

Page 654

1 SDN to AHERF." Then there's an indent. Defers  
 2 A/R problem to be deferred.  
 3 Q. Did you understand SDN at the time  
 4 to be an enterprise that was somehow involved  
 5 in some intermediate ownership or -- let's 10:38:56  
 6 leave it at intermediate ownership of the  
 7 Graduate hospitals?  
 8 A. I don't know the legal structure,  
 9 but SDN was an entity that I believe the  
 10 Graduate hospitals were going to sit in until 10:39:09  
 11 AHERF acquired them legally, whatever had to  
 12 happen legally.  
 13 Q. Do you recall today what you meant  
 14 by saying "defers A slash R problem to be  
 15 deferred"? 10:39:24  
 16 A. No, I don't, sir.  
 17 Q. Do you recall any discussions with  
 18 Mr. Cancelmi or Mr. Buettner or Miss Frazier at  
 19 any time about deferring an A/R problem at the  
 20 Delaware Valley Obligated Group hospitals? 10:39:38  
 21 A. No, I don't recall a discussion. I  
 22 don't recall becoming aware of an A/R problem.  
 23 Q. Do you recall any discussions with  
 24 anyone at Coopers & Lybrand during your fiscal  
 25 year 1997 audit work regarding deferring an A/R 10:39:51

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1 problem at any set of hospitals?  
 2 A. No, I don't recall that being a  
 3 matter that I discussed that year.  
 4 Q. Do you recall it being a matter  
 5 that you discussed in any year, deferring A/R 10:40:06  
 6 problems?  
 7 A. No, I don't recall discussing  
 8 deferring problems. We talked in '96 they had  
 9 increases in A/R and other things that could be  
 10 A/R problems, but I don't know what the defer 10:40:18  
 11 reference is here in these notes.  
 12 Q. Do you ever --  
 13 I'm going to ask you to flip one  
 14 page back to page 44 of your notes.  
 15 A. Okay. 10:40:48  
 16 Q. At the top of the page you've  
 17 written the word or the -- I think the date  
 18 4-21 and the word conference call or an  
 19 abbreviation for it.  
 20 Is that right? 10:41:01  
 21 A. Yes.  
 22 Q. Do you believe today that these are  
 23 notes of a 4-21-97 conference call --  
 24 MR. RYAN: Objection.  
 25 Q. -- written in your hand? 10:41:11

24 (Pages 652 to 655)



Mark Kirstein

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1 A. Yes, at least the top part. I  
2 don't know if the bottom part is written at  
3 some other time or not. I don't know.  
4 Q. Let's look then at the top part.  
5 Read the note for me that follows the heading. 10:41:21  
6 A. 50 million dollar additional A D D  
7 T, apostrophe L, additional reserves.  
8 Q. Can you read the note on the  
9 left-hand margin that appears to either be  
10 drawn to that first note or to a place above 10:41:36  
11 it?  
12 A. Write down 50 million dollars  
13 paren, parenthesis, put half against A/R.  
14 Q. Do you have any recollection today  
15 what either one of those notes means? 10:41:49  
16 A. No, sir.  
17 Q. Can you read the rest of that note  
18 regarding the 4-21-97 conference call for us  
19 starting with the 40 million dollar reference?  
20 A. Sure. 40 million dollar -- 10:42:14  
21 Q. Let me give you one caution on it.  
22 I apologize for interrupting. If you'd read it  
23 a little more slowly than some of the other  
24 reading we've been doing, the court reporter  
25 will be happier. 10:42:24

Page 657

1 A. She'll be my friend?  
2 Q. Perhaps.  
3 A. 40 million dollar debt at Mt. Sinai  
4 to Graduate. Then there's a bullet. Mt. Sinai  
5 to be sold for ten million dollars. Subbullet, 10:42:33  
6 merge with AHERF, question mark. Prior or  
7 subsequent, question mark. New bullet. D E P  
8 R, depreciation. Recapture. Subbullet, view  
9 as NOL under 109. Then the number one GW,  
10 probably good will. The number two, other 10:42:58  
11 intangibles. The number three, a down arrow.  
12 Probably means decrease in expense.  
13 Q. Does NOL mean net operating loss?  
14 A. I believe so, yes.  
15 Q. What is under 109 mean to you? 10:43:10  
16 A. As it relates to AHERF or is it  
17 just in this note or what?  
18 Q. As it relates to this note in  
19 particular.  
20 A. I don't recall writing the note, 10:43:19  
21 so, I mean, do you want me to speculate?  
22 Q. In your note-taking practices as an  
23 auditor at Coopers & Lybrand, does that give  
24 you any context to tell us what you think 109  
25 meant at the time? 10:43:34

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1 A. 109 is a FASB related to taxes, an  
2 SFAS statement related to taxes. Net operating  
3 loss is a concept related to taxes.  
4 Q. Do you have any reason today to  
5 doubt that the page -- the rest of the notes on 10:43:47  
6 the page below the line that crosses it to  
7 which you referred earlier were taken on the  
8 same day?  
9 MR. RYAN: Objection.  
10 A. I don't know when they were 10:44:03  
11 written.  
12 Q. Do you know one way or the other  
13 whether they were written on the same day as we  
14 sit here today?  
15 A. No, I don't. 10:44:10  
16 Q. Look at item one under summary of  
17 conclusions. Can you read that for us?  
18 A. "Debits generated by purchase  
19 accounting to PP&E over 30 years. Subbullet,  
20 will occur at time to AHERF." 10:44:30  
21 Q. Do you know what that means today?  
22 Do you have any recollection?  
23 A. I don't recall writing the note, so  
24 I can't give you a specific recollection. It  
25 seems to reference the concept of amortization 10:44:49

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1 of items recorded as part of purchase  
2 accounting when they were recorded against  
3 PP&E.  
4 Q. So the line "will occur at time to  
5 AHERF" means at the time transferred to AHERF 10:45:03  
6 ownership?  
7 A. I don't know what it means.  
8 MR. RYAN: Objection.  
9 A. I don't remember the meeting, so I  
10 don't know exactly what it is, but you asked me 10:45:11  
11 to generally try to speculate what number one  
12 might reference. And I tried to help you with  
13 that.  
14 Q. I didn't ask you to generally  
15 speculate. I asked you to give me your best 10:45:18  
16 effort to read the note in context.  
17 Is it true that your best effort to  
18 read the note in context would cause you to say  
19 that the note will occur at time, to AHERF  
20 means entrance into AHERF or ownership by 10:45:35  
21 AHERF?  
22 MR. RYAN: Objection.  
23 A. I don't know. I don't know what  
24 that means.  
25 Q. In the left-hand margin, the lower 10:45:40

25 (Pages 656 to 659)

Mark Kirstein

Volume 3

Page 660

1 left-hand corner, you have apparently written  
 2 the words in a box or a part of a box "view  
 3 consolidated basis as acquisition."  
 4 Did I read that right?  
 5 A. Yes. 10:45:53  
 6 Q. Do you know what that means today?  
 7 A. I do not.  
 8 Q. Do you have any recollection of  
 9 what it meant when you wrote it down?  
 10 A. No, I don't. 10:45:58  
 11 Q. I'm going to ask you to flip back a  
 12 couple pages to page 37 of the exhibit. Page  
 13 37 through 41, I think, if you take a moment to  
 14 review them, are another set of your  
 15 handwritten notes. If you could confirm that 10:46:33  
 16 for me and then that would be great and I will  
 17 have a few questions on them.  
 18 MR. JONES: And this is a good spot  
 19 to change the tape.  
 20 THE VIDEOGRAPHER: Off the record 10:46:49  
 21 at 10:47, end of the first videotape.  
 22 (Recess had.)  
 23 THE VIDEOGRAPHER: On the record at  
 24 10:56. Videotape number two, volume three.  
 25 Q. Mr. Kirstein, I had a quick 10:56:22

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1 Q. Then the word just beneath that, is  
 2 that the word review?  
 3 A. You mean on the left-hand margin?  
 4 Q. Yes.  
 5 A. Revenues. 10:57:47  
 6 Q. I'm sorry, revenues. Thank you.  
 7 Then you have a bullet point. Can  
 8 you read what that bullet point says?  
 9 A. "50 million dollar additional  
 10 reserve dash 25 million through March." Next 10:57:58  
 11 line, "50 million through April."  
 12 Q. Having had a chance to look at the  
 13 notes very briefly at our break and then see --  
 14 seeing now how they start off, do you recall  
 15 these to be notes of any meeting or call? 10:58:12  
 16 A. I don't recall.  
 17 Q. I believe that you have previously  
 18 testified that you had a belief that these  
 19 notes were of an internal update meeting with  
 20 Mr. Kirstein, Buettner and Frazier. You don't 10:58:33  
 21 need to trust me on that, but now that I said  
 22 it, does that refresh your recollection, that  
 23 that may be what these notes are?  
 24 A. Yes, I think my prior testimony was  
 25 I didn't recall what they came from, but 10:58:46

Page 661

1 follow-up question to the set of notes we were  
 2 just looking at, in particular, on page 44.  
 3 A. Okay.  
 4 Q. Which those notes are headed with  
 5 the 4-21 conference call phrase. 10:56:35  
 6 A. Okay.  
 7 Q. Do you know who was on this  
 8 conference call as you sit here today?  
 9 A. No, I do not.  
 10 Q. Let's again refer you back again to 10:56:53  
 11 page 37 through 41. These are notes in your  
 12 hand?  
 13 A. Yes.  
 14 Q. They're dated 6-10, is that right?  
 15 A. Correct. 10:57:19  
 16 Q. Do you believe that to be 6-10-97?  
 17 A. Yes.  
 18 Q. You've numbered the pages one  
 19 through five through five of five?  
 20 A. Correct. 10:57:29  
 21 Q. In the upper right-hand corner?  
 22 A. Yes, sir.  
 23 Q. The heading on the first page of  
 24 the note says "AHERF issue"?  
 25 A. Might be plural issues, but yes. 10:57:36

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1 looking at the nature of the content of the  
 2 five pages, it appears to be from some sort of  
 3 update meeting related to the audit.  
 4 I don't sitting here today recall  
 5 if Bill Buettner and Amy Frazier was there, but 10:59:00  
 6 I had to get the information from somebody to  
 7 write it down.  
 8 Q. Do you believe it was a set -- a  
 9 meeting, though, with Coopers & Lybrand  
 10 personnel as you sit here today? 10:59:09  
 11 A. I believe so, yes.  
 12 Q. Do you recall -- can you recall  
 13 whether any AHERF personnel were in attendance?  
 14 A. No, I don't have a specific  
 15 recollection of June 10th, of the meeting. I 10:59:17  
 16 just tried to help in prior testimony and  
 17 again, for you, given the general nature what  
 18 it might be from.  
 19 Q. When you read the first few lines  
 20 as you just did, or having so read them, do you 10:59:32  
 21 have any recollection today of what you meant  
 22 by using the word thru in short form, T H R U?  
 23 A. No, I don't.  
 24 Q. When you wrote that term in your  
 25 auditing work, did it have any specific meaning 10:59:52

26 (Pages 660 to 663)

Mark Kirstein

Volume 3

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1 to you?

2 MR. RYAN: Objection.

3 A. No, I don't think -- no. Thru is

4 not a generally accepted auditing term that I

5 know of and I don't recall having a meaning to 11:00:04

6 that.

7 Q. The next line reads how?

8 A. I'm sorry?

9 Q. How do you read the next line of

10 text? 11:00:13

11 A. You would like me to read it or --

12 Q. I would.

13 A. "80 million dollar write-offs and

14 offset by 50 million dollar reserve," and then

15 there's a subbullet, "need current versus prior 11:00:24

16 year breakout."

17 Q. Do you recall today what you meant

18 when you wrote that?

19 A. No.

20 Q. In any of your work in reviewing 11:00:33

21 documentation over the years, either in

22 preparation for depositions or otherwise, have

23 you come to an understanding of what you meant?

24 MR. RYAN: Objection.

25 A. No, I have not. 11:00:47

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1 believe we got that until the year-end audit

2 phase. So even in June, while I don't recall

3 the meeting, there was no purchase accounting

4 detail that we had at this point in time.

5 Q. Had you discussed any of the 11:02:28

6 purchase accounting approaches that AHERF was

7 taking or was planning to take with AHERF

8 personnel before August?

9 MR. RYAN: Objection.

10 A. Are you referencing like purchase 11:02:44

11 versus pooling?

12 Q. I'm sorry?

13 A. Are you referencing like how they

14 would account for it, like purchase accounting

15 versus pooling? 11:02:52

16 Q. Yes.

17 A. I believe sometime early in

18 planning, maybe January, February, March time

19 frame, there was discussions that I was part of

20 at certain points with management about how 11:03:01

21 would the acquisition for Graduate and

22 potentially others, I think Forbes and AGH, be

23 accounted for by AHERF.

24 Q. Do you recall any discussion of

25 offsetting reserves established in connection 11:03:16

Page 665

1 Q. Do you recall any discussion of the

2 topic of using the 50 million dollar of

3 reserves established in purchase accounting in

4 connection with the Graduate acquisition to

5 offset the 80 million dollar charge-offs to 11:01:14

6 which we referred earlier at the Delaware

7 Valley Obligated Group?

8 MR. RYAN: I'm sorry, can I get

9 that read back, please?

10 (Record read.) 11:01:22

11 MR. RYAN: I'll object to the lack

12 of a time frame.

13 Q. There is no time frame. At any

14 time.

15 A. Other than what we talked about a 11:01:50

16 little earlier, learning of a potential, of the

17 transfer in early August, that's the only time

18 I recall hearing of something, something to

19 that effect.

20 Q. So you -- all right. 11:02:01

21 Nothing before that on this topic?

22 A. No. In fact, as I said earlier,

23 we, C&L, had been waiting, had told management

24 we needed to see what the opening balance sheet

25 and purchase accounting would be, and I don't 11:02:18

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1 with the purchase of the Graduate enterprises

2 against any write-offs in those discussions?

3 MR. RYAN: Objection.

4 A. No. As I said, I don't recall

5 hearing that until August. 11:03:34

6 Q. As you sit here today, do you

7 believe that offsetting 80 million dollars of

8 write-offs at the Delaware Valley Obligated

9 Group hospitals or charge-offs with 50 million

10 dollars of reserves established in connection 11:03:54

11 with the Graduate acquisition would have been

12 wrong under GAAP?

13 MR. RYAN: Objection.

14 A. I think GAAP, at least when I think

15 back, GAAP was assessed at the financial 11:04:10

16 statement level. So in the case of AHERF, it

17 would have been at the AHERF consolidated

18 financial statement level.

19 So I guess it's possible that the

20 transaction that you just talked about, if it 11:04:24

21 even occurred, could theoretically be GAAP.

22 You would have to know the facts and

23 circumstances to make that determination.

24 Q. It certainly could also be non GAAP

25 as well? 11:04:38

27 (Pages 664 to 667)

Page 720

1 the Delaware Valley Obligated Group hospitals,  
 2 does that refresh your recollection about why  
 3 you wrote where did it go?  
 4 A. No, sir.  
 5 Q. Did you ever come to learn that 13:12:46  
 6 what I just described occurred?  
 7 A. I believe subsequent in litigation  
 8 preparing for depositions I've heard something  
 9 similar to what you just described, yes.  
 10 Q. When you heard it then, did it 13:13:00  
 11 refresh your recollection about why you wrote  
 12 where did it go?  
 13 A. No, sir.  
 14 Q. As you sit here today, you don't  
 15 know why you wrote the words where did it go? 13:13:11  
 16 A. No, sir.  
 17 Q. What's in the circle just above the  
 18 words PFMA contract?  
 19 A. Need docs, D O C S.  
 20 Q. Need, N E E D? 13:13:22  
 21 A. Correct.  
 22 Q. What is in the box just to the left  
 23 of PFMA contract?  
 24 A. WFB write-up.  
 25 Q. What does WFB mean? 13:13:32

Page 721

1 A. Bill Buettner.  
 2 Q. What does write-up mean to you  
 3 today?  
 4 A. I don't know. I don't remember  
 5 writing this. 13:13:41  
 6 Q. When you wrote write-up in your --  
 7 the words write-up with -- next to somebody's  
 8 initials -- when you wrote the words write-up  
 9 next to somebody's initials in your audit work  
 10 in connection with fiscal year 1997 or other 13:13:54  
 11 years, what did that typically mean to you?  
 12 MR. RYAN: Objection.  
 13 A. I don't think it has a typical  
 14 meaning. I don't know.  
 15 Q. Does write-up -- I'm only asking, I 13:14:03  
 16 don't know the answer -- mean put together a  
 17 memo, put together a written piece of some kind  
 18 to you?  
 19 A. Not necessarily. I don't know what  
 20 this meant. It could be put together. It 13:14:17  
 21 could be someone has a memo to read. I don't  
 22 know.  
 23 Q. Have you ever used it in your  
 24 business practices to mean that, write up a  
 25 memo for me or write up something on a piece of 13:14:23

Page 722

1 paper for me?  
 2 MR. RYAN: Objection.  
 3 A. It's likely that I have. I don't  
 4 recall specific instances, but that seems like  
 5 a reasonable interpretation. 13:14:35  
 6 Q. Do you ever recall receiving a  
 7 write-up or a memorandum or words on paper from  
 8 Mr. Buettner or anyone on the PFMA contract or  
 9 any reserve regarding the PFMA contract?  
 10 A. Me receiving something? 13:14:54  
 11 Q. Yes, sir.  
 12 A. No.  
 13 Q. Do you see --  
 14 Do you recall any discussions with  
 15 anybody on the AHERF engagement at Coopers & 13:15:13  
 16 Lybrand about the PFMA contract other than what  
 17 you've already shared with us, if anything?  
 18 MR. RYAN: Objection.  
 19 A. No, sir.  
 20 Q. Do you recall any conversations 13:15:23  
 21 with anybody at AHERF about the PFMA contract?  
 22 A. No, sir.  
 23 Q. Look down towards the bottom of the  
 24 page under item two, Greater Atlantic. Do you  
 25 see that? 13:15:53

Page 723

1 A. Yes.  
 2 Q. Can you read the next few words for  
 3 me in that line?  
 4 A. Greater Atlantic enters, the letter  
 5 K, contract is my -- would that mean, with 13:16:01  
 6 Philadelphia Fire.  
 7 Q. Looking down, the last subpoint  
 8 with an arrow beneath that, you write, McNair,  
 9 Beth Chang say something, I can't read the rest  
 10 of it. Can you read that line for me? 13:16:19  
 11 A. McNair slash Beth Chang say  
 12 liability is with GHS. That's underlined.  
 13 Q. GHS was the health system that  
 14 formerly owned the Graduate hospitals?  
 15 A. I don't recall. 13:16:35  
 16 Q. You don't recall.  
 17 Do you know who Mr. McNair or Miss  
 18 Chang were?  
 19 A. No idea who Beth Chang is. I think  
 20 McNair was an attorney, an in-house attorney 13:16:46  
 21 with AHERF, I believe.  
 22 Q. Do you ever recall that they had  
 23 advised that they believed that any liabilities  
 24 for PFMA losses resided with parties other than  
 25 AHERF or the Graduate hospitals? 13:16:59

41 (Pages 720 to 723)



Page 724

1 A. No.  
 2 Q. At the top of the same page, you've  
 3 got a note in the upper right-hand corner or  
 4 toward the upper right-hand corner that's  
 5 circled. Can you read that for us? 13:17:32  
 6 A. Up here?  
 7 Q. Yes.  
 8 A. "Not through income slash move to  
 9 DV reserves for A/R."  
 10 Q. Do you know what that means today? 13:17:41  
 11 A. No, sir.  
 12 Q. It says, "Move to DV reserves for  
 13 A/R." Is that right?  
 14 A. Yes.  
 15 Q. Does that mean the Delaware 13:17:55  
 16 Valley -- does that mean the Delaware Valley  
 17 Obligated Group hospitals and their reserves to  
 18 you today?  
 19 A. I don't know what it means. I  
 20 mean, I don't remember the meaning. I don't 13:18:05  
 21 know what I was thinking when I wrote the note,  
 22 sitting here today, so I don't know what that  
 23 interpretation would be.  
 24 Q. Did you ever see a legal memorandum  
 25 from Miss Chang on the topic of the PFMA 13:18:16

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1 liable subsequently for those losses?  
 2 A. I don't know if I learned who  
 3 became liable. That sounds like a legal  
 4 determination. I think in preparing for  
 5 depositions I've seen some work papers that Amy 13:19:54  
 6 Frazier had done where I believe she made a  
 7 determination as to whether or not there should  
 8 be a reserve for PFMA, and I think she  
 9 considered it in one of her analyses.  
 10 Q. I'm going to ask you to look a 13:20:11  
 11 little bit further down in the document, page  
 12 27 of Exhibit 4403, to the heading CRA Review,  
 13 A, Cushion slash Open Items.  
 14 Do you recall any discussions of  
 15 cushions at this audit meeting? 13:20:28  
 16 MR. RYAN: Objection to form.  
 17 MR. JONES: What is that objection  
 18 based on?  
 19 MR. RYAN: I think we previously  
 20 established that is a term that has multiple 13:20:35  
 21 meanings, so I'm not sure what meaning you were  
 22 using the word cushion.  
 23 MR. JONES: I don't know that I  
 24 attached a particular meaning.  
 25 Q. Do you recall discussions that 13:20:44

Page 725

1 contract or any losses or reserves in  
 2 connection with it?  
 3 A. I don't recall seeing one.  
 4 Q. Did you ever ask for one, a legal  
 5 opinion, or a legal memorandum? 13:18:31  
 6 A. I don't believe I did, no.  
 7 Q. Do you recall any discussions about  
 8 a legal memorandum on this topic in your work  
 9 at AHERF?  
 10 A. Personally, no. I mean, this 13:18:43  
 11 wasn't an area that I was working on.  
 12 Q. Do you recall anyone coming to a  
 13 conclusion about whether any liabilities, as a  
 14 member of the Coopers & Lybrand engagement  
 15 team, coming to a conclusion about who would be 13:19:07  
 16 liable for the PFMA losses?  
 17 MR. RYAN: Could you read that  
 18 again, please?  
 19 (Record read.)  
 20 A. I don't -- are you talking at the 13:19:35  
 21 time of the audit?  
 22 Q. Yes, during your audit work for  
 23 AHERF.  
 24 A. I don't recall.  
 25 Q. Did you learn about who became 13:19:42

Page 727

1 included the word cushions?  
 2 A. No, sir.  
 3 Q. Do you see that there are amounts  
 4 written in your handwriting that have a line  
 5 drawn back to the word cushions? 13:21:00  
 6 A. Yes.  
 7 Q. Those amounts say AGH 2 million  
 8 dollars, is that right?  
 9 A. Yes.  
 10 Q. And Forbes 7 million dollars? 13:21:05  
 11 A. Correct.  
 12 Q. Do you know what those amounts were  
 13 for?  
 14 A. No, I do not.  
 15 Q. Do you recall that those were 13:21:10  
 16 amounts that someone determined were cushions  
 17 on the books of those hospitals?  
 18 A. I don't recall what they are in  
 19 this meeting.  
 20 Q. Do you recall today from any other 13:21:19  
 21 source?  
 22 A. No, sir. I wouldn't -- you have to  
 23 understand, these are notes from an update  
 24 meeting. So what typically happens after these  
 25 meetings is whatever information we gather, 13:21:32

42 (Pages 724 to 727)

# DEPOSITION ERRATA SHEET

RE: THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS OF ALLEGHENY HEALTH, EDUCATION AND RESEARCH FOUNDATION v. PRICEWATERHOUSE COOPERS, LLP

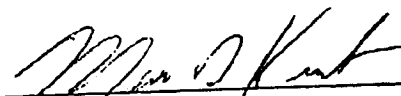
I, Mark Douglas Kirstein, make the following corrections, additions, or deletions to the transcript of my deposition, taken on May 11-13, 2004, for the following reasons. By my signature below, I authorize you to attach this errata sheet to the transcript.

Page: Line	Change	Reason
11:9	"ACP" should be "HCP"	Error
33:8	Answer should end at "Kocak", A new question begins with "thank you" and ends at "bad debt"	Error
36:15	"grade" should be "rate"	Error
80:5	"I do not, no" should be "I do not know"	Error
95:15	"when" should be "went"	Error
101:15	"what it says" should be "Is that what it says?"	Clarification
103:17	"reserve that" should be "reserve. That"	Error
145:5	"fluct" should be "flux"	Error
149:4	"There's" should be "That's"	Error
152:24	"that" should be "a"	Clarification
155:5	"it's an audit" should be "I saw it"	Error
163:23	"of an" should be "of"	Error
196:10	"Cancelmi" should be "McConnell or"	Error
205:11	"Marie" should be "Murray"	Error
212:7	"WL" should be "WO"	Error
217:25, 219:12, 224:9, 302:20, 303:3, 303:14	"Calosheski" should be "Kaliszewski"	Error
224:16	"Collections. He" should be "collections, and even"	Error
224:17	"referred them" should be "further"	Error
239:5	"inpatients instead" should be "inpatients. Instead"	Error
239:6	"aging. Day" should be "aging day"	Error
239:8	"billed. Where" should be "billed -- Where"	Error
250:23	"Christa" should be "Kristen"	Error
291:7	"17. I" should be "17 I"	Error

<i>Page: Line</i>	<i>Change</i>	<i>Reason</i>
332:17	"about, what FAS or FAS" should be "about -- in what FAS or SAS"	Error
335:6	"Envision" should be "Invision"	Error
357:6	"same" s/b "self"	Error
380:13	"D&FB" should be "DNFB"	Error
385:20	"to control" should be "of controls"	Error
395:7	"Elkins box St. Chris" should be "Elkins, Bucks, St. Chris"	Error
397:18	"that" should be "that--"	Error
401:13	"contractual is a bad debt, yes" should be "contractuals, a bad debt--yes"	Error
403:5	"number" should be "level"	Error
437:19	"entries" should be "interest"	Error
452:10	"Elsworth" should be "Ellsworth"	Error
460:10	"BP&E" should be "PP&E"	Error
461:10	"CR" should be "CRA"	Error
465:21	"I do not, no." should be "I do not know"	Error
472:2	"I do not, no." should be "I do not know"	Error
481:7	"can" should be "can't"	Error
507:9	"us" should be "this"	Error
523:1	"Lyden" should be "Lydon"	Error
527:11	"throw" should be "flow through"	Error
533:7	"Might" should be "Might've"	Error
543:12	"line" should be "of"	Error
543:13	"adjusted" should be "unadjusted"	Error
544:8	"No" should be "No. I don't recall that"	Clarification
572:7	"Jenker Bittel" should be "Drinker Biddle"	Error
583:10	"Chris" should be "Kristen"	Error
587:19	Remove "that Mr."	Error
623:4	"A." should be "Q."	Error
625:12	"and assets" should be "of net assets"	Error
626:19	"answer you" should be "give you"	Error
629:3	"does not" should be "is not"	Error

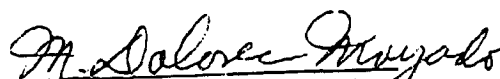
Page: Line	Change	Reason
645:3	"plan" should be "part"	Error
662:11	"50" should be "25"	Error
664:13	Insert quotation mark after "offs"	Error
664:14	Insert quotation mark before "offset"	Error
666:22	"AGH" should be "AVH"	Error
688:4	"you" should be "you've"	Error
692:4	"document" should be "audit"	Error
716:10	Remove "time of the"	Error
731:9, 738:17	"Mary Bcss" should be "Maribcss"	Error
741:13	"imbedding" should be "embeddding"	Error
789:25	"PricewaterhouseCoopers" should be "Pricewaterhouse"	Error
795:6	"from Carl Wease" should be "phone call once"	Error
806:3	"Casperbauer" should be "Kasperbauer"	Error
822:3	"Wackly and Marty Bennett" should be "Wockley and Marne Betta"	Error

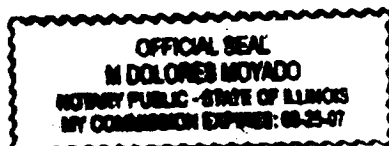
I have read the transcript of my deposition taken May 11-13, 2004 and swear that, with the above changes, the transcript is true and correct.

  
Mark D. Kirstein

7/13/04  
Date

Sworn to before me  
This 13th day of July, 2004

  
Notary Public





**Kite Dep.**

**In The Matter Of:**

*AHERF v.  
PRICEWATERHOUSECOOPERS LLP,*

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*STEVEN B. KITE  
February 25, 2005*

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**KITE, STEVEN B. - Vol. 1**



STEVEN B. KITE

<p style="text-align: right;">Page 114</p> <p>1 he's required to?</p> <p>2 A. I really hadn't thought about that. I</p> <p>3 mean, we have to think to the point simply if there is</p> <p>4 a breach, there are remedies for creditors to take.</p> <p>5 Q. Okay. And I'm just trying to -- I'm just</p> <p>6 trying to --</p> <p>7 A. Yeah, and what they might do I think is</p> <p>8 something I -- you know, we can't speculate on it. I</p> <p>9 mean, typically it involves getting a consultant and</p> <p>10 implementing the recommendations of a consultant to</p> <p>11 enhance revenues, cut expenses or sell off</p> <p>12 non-productive assets.</p> <p>13 Q. Now, you've referred to a provision</p> <p>14 requiring call-in of a consultant. And that would,</p> <p>15 for example, be in Section 6.3 of this Master Trust</p> <p>16 Indenture?</p> <p>17 A. Correct.</p> <p>18 Q. Let's talk a little bit about Section 6.3.</p> <p>19 It's on pages 37 to 38; is that right?</p> <p>20 A. Right.</p> <p>21 Q. And this is a section entitled "Rates and</p> <p>22 Charges;" is that right?</p> <p>23 A. Mm-hmm.</p> <p>24 Q. Have you heard this referred to sometimes</p>	<p style="text-align: right;">Page 116</p> <p>1 able to make all those payments, that they will change</p> <p>2 their rates, right?</p> <p>3 A. Correct.</p> <p>4 Q. And that's why this is called a rate</p> <p>5 covenant, right?</p> <p>6 A. Probably. That's part of it.</p> <p>7 Q. All right. Then the third sentence of</p> <p>8 Section 6.3 states, "The Members of the Obligated</p> <p>9 Group covenant and agree that they will cause the</p> <p>10 officer certifying the report referred to in Section</p> <p>11 6.6(b) hereof to calculate the Historical Debt Service</p> <p>12 Coverage Ratio for the Fiscal Year covered by such</p> <p>13 report and to deliver a copy of such calculation to</p> <p>14 the Master Trustee," right?</p> <p>15 A. Right.</p> <p>16 Q. So, that's saying every year the obligated</p> <p>17 group will calculate this ratio and an officer of the</p> <p>18 company will deliver that to the Master Trustee?</p> <p>19 A. Right.</p> <p>20 Q. And in fact DVOG did that for 1996 and</p> <p>21 1997, right?</p> <p>22 A. I don't think I ever saw a certificate.</p> <p>23 Q. Okay. You didn't ever review the</p> <p>24 certificates that were provided by officers of DVOG?</p>
<p style="text-align: right;">Page 115</p> <p>1 as a rate covenant?</p> <p>2 A. Correct.</p> <p>3 Q. And do you agree that Section 6.3 then</p> <p>4 contains a covenant that the obligated group will</p> <p>5 operate all of its facilities on a revenue-producing</p> <p>6 basis and will charge such fees and rates for its</p> <p>7 facilities and services and will exercise such skill</p> <p>8 and diligence as to provide income from its property</p> <p>9 together with other available funds sufficient to pay</p> <p>10 promptly all payments of principal and interest on its</p> <p>11 indebtedness, all expenses of operation, maintenance</p> <p>12 and repair of its facility and all other payments</p> <p>13 required to be made by it hereunder to the extent</p> <p>14 permitted by law"?</p> <p>15 A. Yes, Section 6.3 contains several</p> <p>16 covenants, and that is one of them.</p> <p>17 Q. All right. So, this is in effect a</p> <p>18 covenant to manage your business and to charge rates</p> <p>19 in such a way that you'll be able to make the payments</p> <p>20 you have to make?</p> <p>21 A. Correct.</p> <p>22 Q. All right. So, the second sentence</p> <p>23 contains a related covenant which says if the</p> <p>24 obligated group has to change its rates in order to be</p>	<p style="text-align: right;">Page 117</p> <p>1 A. I don't believe I ever saw that.</p> <p>2 Q. Okay. But at a minimum you don't have any</p> <p>3 basis to say that DVOG didn't do what's stated there</p> <p>4 in the third sentence of Section 6.3, right?</p> <p>5 A. Just don't know one way or the other.</p> <p>6 Q. Okay. Do you agree that DVOG in fact</p> <p>7 operated its business and charged rates in such a way</p> <p>8 that it was able to make the payments it needed to in</p> <p>9 1996 and 1997?</p> <p>10 A. I don't have any basis to know that one way</p> <p>11 or the other.</p> <p>12 Q. All right. Now, all three of the sentences</p> <p>13 that we've reviewed so far contain the words</p> <p>14 "covenant" and "agree," right?</p> <p>15 A. Okay. Yes.</p> <p>16 Q. Now, the next sentence, which now talks</p> <p>17 about historical debt service coverage ratio of 1.10,</p> <p>18 that sentence does not contain the words "covenant" or</p> <p>19 "agree," does it?</p> <p>20 A. That's correct.</p> <p>21 Q. All right. Now, this is the sentence which</p> <p>22 provides that if the historical debt service coverage</p> <p>23 ratio is less than 1.1 to 1, then the obligated group</p> <p>24 has to retain a consultant, right?</p>

30 (Pages 114 to 117)

STEVEN B. KITE

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1 A. Yes.  
 2 Q. Now, "consultant" is another one of our  
 3 defined terms; is that right?  
 4 A. Right.  
 5 Q. In fact, it's defined on page 4 of the  
 6 agreement.  
 7 A. Okay. I'm with you.  
 8 Q. Now, do you agree with me that under the  
 9 DVOG Master Trust Indenture the obligated group can  
 10 choose who the consultant will be if a consultant has  
 11 to be called in through Section 6.3?  
 12 A. Yes.  
 13 Q. That is, the bond insurer or the letter of  
 14 credit bank doesn't have an ability to veto the  
 15 selection of consultant, right?  
 16 A. Correct.  
 17 Q. Do you agree with me that there is no  
 18 requirement that the consultant must be independent of  
 19 the obligated group?  
 20 A. Correct.  
 21 Q. Have you seen bond documents where the  
 22 definition of consultant in fact did include such a  
 23 requirement?  
 24 A. Yes.

Page 119

1 Q. And that was not included in the DVOG  
 2 Master Trust Indenture, right?  
 3 A. Correct.  
 4 Q. So that, to provide an example, the DVOG  
 5 could have retained AHERF as a consultant in the  
 6 manner that in 1977 the Centennial Obligated Group  
 7 retained AHERF as a consultant under the analogous  
 8 provision of its Master Trust Indenture, right?  
 9 A. Subject to the caveat that the consultant  
 10 has to have a favorable reputation for skill and  
 11 experience in performing similar services.  
 12 And I noticed that in how they were dealing  
 13 with Centennial it struck me that it would be hard to  
 14 say that AHERF meets that definition. But if AHERF  
 15 did meet that definition, yes, they could have been  
 16 appointed.  
 17 Q. All right. And you are aware, are you not,  
 18 that in 1997 AHERF and Centennial took a position that  
 19 AHERF in fact did meet the definition of a consultant?  
 20 A. I believe -- I believe so, they took that  
 21 position.  
 22 Q. And are you aware of the fact that the  
 23 trustee for the Centennial bonds never disagreed with  
 24 that position?

Page 120

1 A. I -- somebody disagreed with it I remember  
 2 from reading something. I don't recall whether it was  
 3 a trustee or one of the banks in the credit group, but  
 4 I remember reading something about somebody saying  
 5 AHERF shouldn't have been the consultant. But I don't  
 6 remember who it was and I don't remember what the  
 7 trustee's position was.  
 8 Q. Do you agree that the trustee for the  
 9 Centennial bonds never declared an event of default as  
 10 a result of Centennial's retention of AHERF as a  
 11 consultant?  
 12 A. I'm not aware of an event of default.  
 13 Q. All right. Now, if you could return,  
 14 please, to Section 6.3, --  
 15 A. Okay.  
 16 Q. -- the next sentence, we're now on the  
 17 fourth paragraph of this section, the next sentence  
 18 provides that a copy of the consultant's report and  
 19 recommendations has to be filed with various people,  
 20 right?  
 21 A. Right.  
 22 Q. Then the next sentence states, "The  
 23 obligated group shall follow the recommendation of the  
 24 consultant to the extent feasible," right?

Page 121

1 A. Right.  
 2 Q. Then the next sentence is the one that I  
 3 believe you focus on in your report, right, that  
 4 contains a proviso relating to a hundred percent,  
 5 right?  
 6 A. Correct.  
 7 MR. COGAN: Objection.  
 8 BY MR. RYAN:  
 9 Q. Now, this sentence states in part, "No  
 10 event of default shall be deemed to have occurred  
 11 hereunder," right?  
 12 A. Right.  
 13 Q. And you agree with me that "hereunder"  
 14 means under this Master Trust Indenture?  
 15 A. Yes.  
 16 Q. It does not mean under this section?  
 17 A. Correct.  
 18 Q. Now, you see, then, in the next sentence  
 19 that reads, "The foregoing provisions notwithstanding,  
 20 if in any fiscal year the historical debt service  
 21 coverage ratio is less than 1.10, the Master Trustee  
 22 shall not be obligated to require the members of the  
 23 obligated group to retain a consultant to make such  
 24 recommendations" if two certain instances obtain,

31 (Pages 118 to 121)



**ERRATA SHEET  
FOR STEVEN B. KITE**

<b>Page/Line</b>	<b>Should Read</b>	<b>Reason for Change</b>
6/14	Change "Yeah" to "Yes"	Grammar
8/5	Change "enjoyed work" to "enjoyed working"	Grammar
8/15	delete "in"	Grammar
9/10	Change "their" to "its"	Grammar
9/11	Change "their" to "its"	Grammar
9/12-17	Change to read "and bond counsel's client is typically viewed for legal conflict of interest purposes as the borrower or the issuer."	Clarity
11/18	Change "party" to "entity"	Clarity
12/11	Change "yeah" to "yes"	Grammar
12/19	Change "represent" to "represents"	Grammar
12/23	Change "a couple of" to "two"	Grammar
16/24 - 17/1	Delete "I said" insert "company" at end of sentence	Clarity
17/14-16	Revise sentence to read "I've represented them in the past, but not recently or currently."	Clarity
18/24	Change "Non-profit" to "Health Care"	Accuracy
29/12	Change "Yeah" to "Yes"	Grammar
29/16	Insert "for" before "selling"	Clarity
30/18	Change "you know" to "I would"	Clarity
37/1	Change "were" to "was"	Grammar
46/24	Change "relate d" to "related"	Typo
47/4	Change "graduate" to "Graduate"	Typo
51/23	Change "exemptions" to "exceptions"	Clarity
55/13	Change "ben" to "been"	Typo
57/20	Insert "up" after "picked"	Clarity
59/2	Change "yeah" to "Yes"	Grammar
63/7	Change "Yeah" to "Yes"	Grammar
64/17	Change "contain" to "contains"	Grammar
65/1-2	Change "has typically been" to "is typically"	Grammar
65/12	Insert "a" before "separate"	Grammar
70/4	Change "then kind of" to "that"	Clarity/Grammar
74/9	Change "Yeah" to "Yes"	Grammar
81/21	Change "we" to "they" and "our" to "their"	Grammar
84/18	Change "but" to "by"	Typo
86/3	Change "cuz" to "because"	Grammar
101/6	Change "as" to "is"	Typo
103/23	Change "restate d" to "restated"	Typo
110/10	Change "required" to "allowed"	Clarity
114/3	Change "think" to "get"	Clarity
114/7	Change "Yeah" to "Yes"	Grammar
124/14	Change "weeding" to "reading"	Typo
125/6	Change "Yeah" to "Yes"	Grammar
136/15	Insert "paper" after "commercial"	Clarity
136/20	Delete apostrophe in "agreement's"	Grammar

Page/Line	Should Read	Reason for Change
151/18	Change "Yeah" to "Yes"	Grammar
152/1	Change "Yeah" to "Yes"	Grammar
157/5	Change "the" to "by"	Clarity
160/17	Change "what" to "was"	Clarity
162/22	Change "Yeah" to "Yes"	Grammar
166/10	Change "Yeah" to "Yes"	Grammar
167/3	Change "cuz" to "because"	Grammar
169/2	Change "Yeah" to "Yes"	Grammar
169/7	Change "Yeah" to "Yes"	Grammar
170/3	Change "Yeah" to "Yes"	Grammar
171/6	Insert "disclosure part" after "market" Change "till" to "until"	Clarity
174/17	Change "'em" to "them"	Grammar
180/2	Change "gonna" to "going to"	Grammar
189/21	Change "Yeah" to "Yes"	Grammar
192/2	Change "Yeah" to "Yes" in both places	Grammar
216/21	Change "in in" to "into"	Clarity
217/4	Change "out" to "over"	Clarity
219/2	Change "gonna" to "going to"	Grammar
219/4	Change "familiar" to "I remember"	Clarity
220/13	Change "gonna" to "going to"	Grammar
221/7	Change "Yeah" to "Yes"	Grammar
227/4-5	Change "cuz" to "because"	Grammar
228/15	Change "their" to "the"	Clarity
232/12	Change "in" to "an"	Typo
234/2	Change "kind of" to "tied to"	Clarity
234/17	Change "gonna" to "going to"	Grammar
238/15	Change "creditor's" to "creditors"	Typo
238/17	Change "the" to "a"	Clarity
244/12	Change "covenant" to "consultant"	Clarity
245/1	Change "change" to "charge"	Typo
254/10	Change "gonna" to "going to"	Grammar
254/23	Change "waiving" to "waiting"	Typo
255/5	Change "gonna" to "going to"	Grammar
260/9	Change "change" to "charge"	Typo
267/4	Change "cuz" to "because"	Grammar
267/9	Change "Yeah" to "Yes"	Grammar
267/18	Change "490" to "495"	Checked Our Records
268/15	Change "either 400 or 420" to "410"	Checked Our Records
	Change "490" to "495"	Checked Our Records
221/10	Change "least" to "last"	Typo
269/20	Change "nineties" to "eighties"	Checked Our Records
270/2	Change "95" to "85"	Checked Our Records

**Knittel Dep.**

**In The Matter Of:**

***AHERF v.  
PRICEWATERHOUSECOOPERS, L.L.P.***

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***MARCELLA KNITTEL  
July 23, 2003***

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**KNITTEL, MARCELLA**



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## MARCELLA KNITTEL

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Page 60

1 words or something, I might make some  
 2 suggestions or give the credit analyst more  
 3 information, but ultimately the credit analyst  
 4 was responsible for what they put into the  
 5 write-up.  
 6 Q. Okay. But you would have had an understanding  
 7 of what it was based on your discussions with  
 8 them --  
 9 A. Yes.  
 10 Q. -- of what they were writing up?  
 11 A. Yes.  
 12 Q. Would you have approved of -- would you have to  
 13 approve what they wrote up?  
 14 A. Yes.  
 15 Q. Do you recall any instances where they wrote  
 16 something into their write-up that you didn't  
 17 agree with and then in turn submitted it to the  
 18 senior credit committee?  
 19 A. Yes.  
 20 Q. I mean --  
 21 A. I mean that was common to have differing views  
 22 on how a certain piece of information might be  
 23 evaluated. Typically, typically we came to a  
 24 common understanding before the -- before it  
 25 went to senior credit committee, but there --

1 whether it's correct or incorrect, it's how you  
 2 would potentially interpret information or how  
 3 you would view, for instance, a change in the  
 4 financial statements, is this -- how good or  
 5 how bad is this. It's a matter of degree  
 6 typically, not a no, this is right or this is  
 7 wrong. It typically wasn't that black or  
 8 white.  
 9 Q. So as to some of the attachments that were  
 10 attached to your report, you might have  
 11 disagreed with from time to time how  
 12 information was interpreted or presented?  
 13 A. That's fair.  
 14 Q. Do you recall any times where you actually  
 15 thought that the data that was submitted was  
 16 incorrect?  
 17 A. No.  
 18 Q. Before we take a break, the actual report that  
 19 had these attachments on it, was that authored  
 20 by you in most instances?  
 21 A. The credit -- the credit -- the front part of  
 22 the credit offering memorandum was authored by  
 23 me.  
 24 MR. TERUYA: Okay. Why don't we take  
 25 a break.

Page 59

Page 61

1 there were places where we tended to disagree.  
 2 Q. Would you have indicated that disagreement in  
 3 any way in the packages of information that  
 4 were submitted to the senior credit committee?  
 5 A. More -- more in dialogue, in a question and  
 6 answer dialogue. If points were brought up  
 7 that I didn't agree with, I might say so in the  
 8 dialogue.  
 9 Q. Were the disagreements that you recall about  
 10 how information was presented to the senior  
 11 credit committee limited to how information was  
 12 presented? Or let me rephrase that.  
 13 You mentioned you had some  
 14 disagreements from time to time with the credit  
 15 analysts as to information that went to the  
 16 senior credit committee, and was that limited  
 17 to how information was presented or do you  
 18 actually recall some instances where you  
 19 actually thought information that was presented  
 20 to the committee was incorrect?  
 21 A. It's -- I would say -- the best way to  
 22 characterize this in terms -- it's not always  
 23 just information that's going to the senior  
 24 credit committee that we would either disagree  
 25 or agree on, and it's not really so much

1 MS. HACKETT: Okay. Thank you.  
 2 THE VIDEOGRAPHER: We are now going  
 3 off the record. The time is 10:04 a.m.  
 4 ----  
 5 (There was a recess in the proceedings.)  
 6 ----  
 7 THE VIDEOGRAPHER: We are now going  
 8 back on the record. The time is now 10:17 a.m.  
 9 MR. TERUYA: I'm going to mark as  
 10 Exhibit 1701 a document that appears to be a  
 11 credit agreement by and among Allegheny United  
 12 Hospitals, St. Christopher's Hospital For  
 13 Children, Horizon Medical Corporation, and PNC  
 14 Bank, National Association, dated January 6th,  
 15 1994, that has Bates Nos. PNC 38124 through  
 16 169.  
 17 ----  
 18 (Exhibit 1701 marked for identification.)  
 19 ----  
 20 BY MR. TERUYA:  
 21 Q. I'll just ask you to take a look at the  
 22 document, and I was going to ask you if you  
 23 recognize it?  
 24 ----  
 25 (The witness reviewed the Exhibit.)